

THEFT OF SERVICES¹
(Avoiding Admission Charges)
PENAL LAW 165.15(9)
(Committed on or after Nov. 1, 1992)

The (*specify*) count is Theft of Services.

Under our law, a person is guilty of Theft of Services when, with intent to avoid payment of the lawful charge for admission to any theater [*or* concert hall] [*or* for admission to (*or* use of) a chair lift, gondola, rope-tow or similar mechanical device utilized in assisting skiers in transportation to a point of ski arrival or departure], that person obtains or attempts to obtain such admission without payment of the lawful charge therefor.²

The following terms used in that definition have a special meaning:

INTENT means conscious objective or purpose.³ Thus, a person acts with intent to avoid payment of a lawful charge when that person's conscious objective or purpose is to avoid payment of such lawful charge.

OBTAIN includes, but is not limited to, the bringing about of

¹This offense is elevated from a violation to a class A misdemeanor if the defendant has been previously convicted of theft of services under this subsection.

²This offense is elevated from a violation to a class A misdemeanor if the defendant has

"been previously convicted of theft of services under [Penal Law § 165.15(9)]."

If the defendant has been charged with this crime as a Class A Misdemeanor, this element must be charged in a special information. The defendant must be arraigned upon the special information in accordance with the procedure set forth in CPL § 200.60(3). If, upon such arraignment, the defendant admits the element, the court **must not make any reference to it in the definition of the offense or in listing the elements of the offense.** But if the defendant has denied the previous conviction or remained mute, the court must add this element to the definition of the crime and the list of elements. See, *People v. Cooper*, 78 NY2d 476 (1991).

³See Penal Law § 15.05(1).

a transfer or purported transfer of a service or of a legal interest therein, whether to the obtainer or another.⁴

A person ATTEMPTS to obtain admission without payment of the lawful charge when he or she intends to do so and engages in conduct which tends to effect that objective.⁵

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, both of the following two elements:

1. That on or about *(date)*, in the county of *(county)*, the defendant, *(defendant's name)*, obtained or attempted to obtain admission to a theater [or concert hall] [or admission to (or use of) a chair lift, gondola, rope-tow or similar mechanical device utilized in assisting skiers in transportation to a point of ski arrival or departure], without payment of the lawful admission charge; and
2. That the defendant did so with the intent to avoid payment of the lawful admission charge.⁶

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable

⁴See Penal Law § 155.00(2).

⁵See Penal Law § 110.00.

⁶If the defendant is charged with this crime as a Class A Misdemeanor, and has admitted the aggravating element of a prior conviction, then list *only* the first two elements for the jury.

If the defendant is charged with this crime as a Class A Misdemeanor, and has denied the aggravating element or remained mute, then add the following:

"and 3. That the defendant had previously been convicted of theft of services in violation of Penal Law § 165.15(9)."

doubt either one or both of those elements, you must find the defendant not guilty of this crime.